



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 20, 1997

H.R. 1534 **Private Property Rights Implementation Act of 1997**

As ordered reported by the House Committee on the Judiciary on October 7, 1997

Enacting H.R. 1534 would give greater access to federal courts to plaintiffs making claims based on property owners' rights secured by the Constitution. As a result, the bill is likely to impose additional costs on the U.S. court system. While some of the affected cases could be time-consuming and costly, CBO cannot predict the number or cost of such cases. Enactment of H.R. 1534 would not affect direct spending or receipts of the federal government, and therefore, pay-as-you-go procedures would not apply.

The Fifth Amendment prohibits the taking of private property for public use without just compensation. This restriction on government action is extended to the states through the due process clause of the 14th Amendment. H.R. 1534 would primarily affect takings claims directed at the regulatory decisions of state and local governments. First, this bill would prohibit a federal district court from exercising its current right to abstain from hearing certain takings claims. H.R. 1534 also would define "final decision" for these property rights claims, thereby relaxing the standards by which such claims are found ripe for adjudication in federal district courts or the U.S. Court of Federal Claims. With regard to district courts, the definition specifically removes the requirement that plaintiffs exhaust all state remedies before proceeding to federal court.

Most takings cases affected by this bill would originate from a dispute over a state or local land use regulation. When local regulation is at issue, a number of appeals to local governing boards may occur. When those venues are exhausted and when the claim asserts a taking, federal courts often defer to state courts by refusing jurisdiction in such matters. The federal courts often argue that such cases are not ripe for federal adjudication because plaintiffs have not exhausted their opportunities to obtain compensation through the state courts. CBO expects that enacting the jurisdictional changes under H.R. 1534 would give plaintiffs greater access to federal courts, thus imposing additional costs on the U.S. court system to the extent that additional takings claims are filed and heard in federal courts.

Based on information from various legal experts, CBO estimates that only a small percentage of all civil cases filed in state courts involve takings claims. Of these, CBO believes that only a small proportion would be tried in federal court as the result of H.R. 1534, in part because state and local regulators may have an incentive to settle with plaintiffs in order to avoid a trial in federal court. On the other hand, most cases that would reach trial in a federal court as a result of this bill are likely to involve relatively large claims and could be time-consuming and costly. CBO has no basis for estimating the number of cases that would be affected or the amount of court costs that would result. Any such costs would come from appropriated funds.

Section 4 of the Unfunded Mandates Reform Act of 1995 (UMRA) excludes from application of that act legislative provisions that enforce constitutional rights of individuals. Because the changes to federal jurisdiction over property rights cases could involve the enforcement of certain individual constitutional rights, H.R. 1534 may be excluded. In any event, because the changes only affect federal court procedures, the bill would not impose any enforceable duty on state, local, or tribal governments, or on the private sector.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs), Leo Lex (for the state and local impact), and Matt Eyles (for the private-sector impact). This estimate was approved by Robert A. Sunshine, Assistant Deputy Director for Budget Analysis.